Mellon

Mellon Investor Services

Stephen J. Dolmatch
Executive Vice President
General Counsel & Secretary

April 29, 2005

Via e-mail: rule-comments@sec.gov

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

RE: File Number SR-NYSE-2004-62

Dear Mr. Katz:

Mellon Investor Services LLC ("Mellon"), a leading provider of shareholder and related services, is pleased to submit its comments on the proposal by the New York Stock Exchange Inc. ("NYSE") to eliminate Rule 496 and amend the Listed Company Manual relating to transfer agents.

Mellon agrees with the NYSE's proposal to remove the current requirement that transfer agents for listed companies maintain an office or agent (known as a "drop") south of Chambers Street in the Borough of Manhattan, City of New York. As a result of the continuing expansion of book-entry ownership, we believe the requirement to maintain a drop in lower Manhattan for physical certificates is now outdated and the elimination of this requirement will not harm market participants.

However, Mellon disagrees with the NYSE's proposed revision to the concept of record date protection. We believe this proposed revision would impose unreasonable burdens on transfer agents and create processing and reconciliation risks that would be detrimental to the marketplace. In addition, we believe this proposal would impede the goal of the Securities and Exchange Commission (the "SEC") and many market participants to reduce the use of securities certificates in the trading environment and achieve a straight-through processing model. We discuss these concerns below.

Rule 496 currently requires transfer agents to record the transfer of all securities that they receive prior to the close of business on a record date as being transferred on such record date.

As revised, such record date protection would be extended to all transferees whose securities were deposited in the mail or with a commercial delivery service by a registered clearing agency no later than the business day after the record date. Since transfer agents would not receive the securities until after the record date, when the shareholder file typically would have already been closed, they would be forced to delay the reconciliation of the issuer's account or reopen such account for adjustment. Additionally, the overnight delivery services are not infallible; deliveries can be delayed due to inclement weather and other factors. It is unfair and unwise to make transfer agents assume the risk of receiving material sent by others. By compelling transfer agents to account for shareholders without having securities in hand, the proposed rule would introduce extra reconciliation and backdating steps into the process, likely leading to a greater number of errors. We believe this is a result that neither the SEC nor market participants would desire.

Further, this disruption to the process flow used by transfer agents would create additional exception processing costs. By keying record date protection to the time securities are sent, rather than the time they are received, transfer agents would bear the costs of special rush processing to minimize the impact of delayed reconciliation or additional adjustment expenses to backdate items received after an account is closed. The NYSE's proposal also would require transfer agents to create and monitor multiple intake systems for presentations. Transfer agents would be required to make distinctions based not only on the identity of the presenter (*i.e*., registered clearing agency or not), but also on where the issue is listed or traded, since the proposed rule would apply only to NYSE issues. This arrangement, with its varying levels of sorting, would be costly and impractical, especially for transfer agents that have succeeded in achieving a same-day processing model. For the bulk of the industry that has not achieved this standard, the NYSE proposal would deter progress toward a straight-through processing approach.

In addition to these cost and policy issues, delayed account reconciliation and item backdating may not even be *possible* in certain circumstances. For instance, the record date and dividend calculation date are at times set on the same day as the payment date on certain equity issues, and global shares would be impacted in other ways. Transfer agents calculate the amount of such dividends and either issue dividend checks or, for stock plan participants, reinvest such amounts. However, under the NYSE's proposed rule, transfer agents may continue to receive items after the record date, even though payment already has been made. If dividend checks have been cashed or shares representing reinvested dividends have been sold, then it would be impossible for transfer agents to make any necessary adjustments.

It is also important to note that a workable system is already in place in which brokers, when faced with the possibility of missing a pending record date or expiration date, deliver items directly to transfer agents, instead of indirectly through registered clearing agencies. Even without a drop facility, brokers can very easily continue to avail themselves of this direct delivery method to ensure their customers receive record date protection, without requiring any special procedures for registered clearing agencies. There is therefore no reason why additional complexity and risk need to be built into the process.

Although we understand that some transfer agents believe they could accommodate a record date protection regimen involving securities received by transfer agents one business day after the record date, as opposed to the two-day standard proposed, even a one-day delay is ill-advised, and unnecessary, for the reasons noted above. Instead, wherever possible, the industry should encourage the continued development of best practices like straight-through processing, where items can be processed and reconciled within twenty-four hours of receipt. In all, while the proposed rule change might provide a day or two of greater flexibility to registered clearing agencies, applying such an undesirable processing standard that would impact the processing of all securities, due only to the ever-dwindling number of physical securities held by such agencies, would create significant practical disadvantages to transfer agents and others.

Finally, the proposed change would be counterproductive to the goal of reducing the number of physical securities, which has been embraced by the SEC and the markets as a whole. As the SEC noted in its 2004 Concept Release, *Securities Transactions Settlement*, File No. S7-13-04, the physical movement of securities in connection with settlement by brokers and dealers increases the costs and risks of clearing and settling securities for all parties processing the securities, and most of these costs and risks are ultimately borne by investors. We believe that the marketplace should not take measures to subsidize investors who insist on holding securities in paper form. The record date protection proposal would impose new risks and inefficiencies on the entire marketplace for no reason but to accommodate investors that refuse to hold their shares in electronic form. The small number of such investors that wish to transact on record dates should be encouraged to hold their shares electronically. Eliminating the drop would be a step forward in achieving the SEC's objectives in this area; however, basing record date protection on mailing instead of receipt would amount to two steps back.

For these reasons, while Mellon strongly supports the elimination of the drop requirement, we recommend that the NYSE retain the existing form of record date protection.

We thank you for the opportunity to comment on the NYSE's proposal and would be happy to discuss with you any questions you may have about these comments.

Very truly yours,

Stephen J. Dolmatch